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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

FAITH CENTER CHURCH EVANGELISTIC MINISTRIES AND HATTIE HOPKINS,

Petitioners,

v.

FEDERAL D. GLOVER, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICI CURIAE* OF THE CHRISTIAN LEGAL SOCIETY, THE ETHICS & RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, THE NATIONAL ASSOCIATION OF EVANGELICALS, AND THE COALITION FOR EQUAL ACCESS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[*]

The Christian Legal Society (the Society) is a nonprofit, interdenominational association of Christian attorneys, law students, judges, and law professors with chapters in nearly every state and at numerous accredited law schools. The Society's legal advocacy and information division, the Center for Law & Religious Freedom (the Center), works for the protection of religious belief and practice, as well as for the autonomy from the government of religion and religious organizations, in state and federal courts throughout this nation. The Center strives to preserve religious freedom in order that men and women might be free to do God's will and because the founding instrument of this nation acknowledges as a "self-evident truth" that all persons are divinely endowed with neither rights that no government may abridge nor any citizen waive. Among such inalienable rights is the right of religious liberty.

The Ethics & Religious Liberty Commission (ERLC) is an agency of the Southern Baptist Convention (SBC) that is dedicated to addressing social and moral concerns and their implications on public policy issues from City Hall to Congress. The SBC is the largest Protestant denomination in the country, with over 16 million members. ERLC's mission is to

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[*] The parties consented to the filing of this brief, and copies of the consent letters are on file with the Clerk of the Court. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *amici curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

awaken, inform, energize, equip, and mobilize Christians to be the catalysts for the Biblically-based transformation of their families, churches, communities, and the nation. Hundreds of Southern Baptist churches have used or are currently using public facilities as integral parts of their religious activities. Many hundreds more will need to meet in public facilities in the future in order to meet their spiritual obligations to God, their members, and their communities.

The National Association of Evangelicals ("NAE") is the largest network of evangelical churches, denominations, colleges, and ministries in the United States. It serves 60 member denominations and associations, representing 45,000 local churches and over 30 million Christians. NAE serves as the collective voice of evangelical churches and ministries. NAE believes that religious freedom is a gift of God and vital to the limited government which is our American constitutional republic.

The Coalition for Equal Access ("CEA") is an association of fifteen religious organizations which use public facilities for religious services. While a number of CEA members are located within the Ninth Circuit, members hail from locations from across the country, from Boston to Shreveport to San Juan Capistrano. For CEA members, public meeting spaces often provide the only available location for religious services. The CEA members include small congregations that otherwise do not have the resources to meet elsewhere. For example, CEA member South Riding Church holds weekly worship services at a public school in Virginia because it is

the only location with enough space that the church can afford to rent for one-half day per week. Member St. Bernard Baptist Church of Louisiana began meeting in a public high school after their small church building was damaged by Hurricane Katrina. Lighthouse Christian Fellowship meets in a public elementary school in California on a weekly basis. As approximately 19 other churches in the area also use public schools, the loss of such space would result in all these churches competing for private rentals in the same area, with some churches forced to shut down permanently. CEA believes equal access to public meeting spaces for worship and religious gatherings is critical to the exercise of religion.

ARGUMENT

Amici join Petitioners, the Faith Center Church and Hattie Hopkins, in urging this Court to grant their petition for a writ of certiorari. While *Amici* concur with the argument stated in the petition, *Amici* raise additional reasons why the petition should be granted.

As copious case law and a drive around practically any community on a weekend attests, religious organizations across this country frequently use public spaces for their services and other meetings. This case presents but one example and raises these important issues:

1. Is a law that expressly prohibits religious services in a public space consistent with the First Amendment's

proscription of any law prohibiting the free exercise of religion?

2. Is a religious worship service protected speech under the First Amendment?

3. At a minimum, can a government distinguish between religious "services" and "speech" without becoming unconstitutionally entangled?

This Court should grant the petition because the Ninth Circuit's majority opinion misreads the First Amendment and threatens the vibrant exercise of religion as practiced extensively throughout this country, generally by smaller, less affluent congregations.

I. Certiorari Should Be Granted Because Use of Public Spaces for Religious Services Is Widespread

The majority opinion of the Court of Appeals gives state and local governments the ability to prevent a religious organization from conducting a "religious service" in a space generally made available for other community organizations for "educational, cultural and community related meetings, programs, and activities." *Faith Ctr. Church Evangelical Ministries v. Glover*, 462 F.3d 1194, 1198, 1214 (9th Cir. 2006). This is inconsistent with historical practice and threatens present practice that is common throughout the land.

The following historical sampling is taken from the Library of Congress Online Exhibition:

Religion and the Founding of the American Republic, http://www.loc.gov/exhibits/religion/rel06-2.html (last visited July 16, 2007):

> *Within a year of his inauguration, Jefferson began attending church services in the House of Representatives. Madison followed Jefferson's example, although unlike Jefferson, who rode on horseback to church in the Capitol, Madison came in a coach and four. Worship services in the House—a practice that continued until after the Civil War—were acceptable to Jefferson because they were nondiscriminatory and voluntary.*
>
> * * *
>
> *The first Treasury Building, where several denominations conducted church services, was burned by the British in 1814.*
>
> * * *
>
> *The House moved to its current location on the south side of the Capitol in 1857. It contained the "largest Protestant Sabbath audience" in the United States when the First Congregational Church of Washington held services there from 1865 to 1868.*

On the other end of the social spectrum, African-American congregants in the North in pre-Civil War times were ostracized by white congregations. Because they often could not afford their own church buildings, they resorted to public buildings for religious services. *See* CRAIG D.

TOWNSEND, FAITH IN THEIR OWN COLOR: BLACK EPISCOPALIANS IN ANTEBELLUM NEW YORK CITY ch. 5 (2005).

The need of smaller, less affluent congregations to use public facilities is still present today. While most publicity goes to the "mega-churches," the average size of a Christian congregation in the United States is less than 100, and many smaller congregations cannot afford to own their own property. U.S. Congregational Life Survey, *available at* http://www.uscongregations.org/challenges.htm (last visited July 16, 2007). Thus, they frequently use public properties, for free or by rental, to conduct their meetings and services.

The statistics regarding American religious practice demonstrate the evident need for access to such public spaces. Forty-seven percent of American adults report that they attend regular religious services on a typical weekend. The Barna Group (2005), *available at* http://www.barna.org. Yet, 50% of all U.S. congregations contain only 11% of the total number of worshipers in a given week. U.S. Congregational Life Survey (April 2001), *available at* http://www.uscongregations.org/challenges.htm (last visited July 16, 2007). Moreover, participation in small groups for the purpose of weekday prayer, Bible study, or spiritual fellowship, excluding Sunday school or other church classes, has doubled from 11% in 1994 to 22% in 2006. The Barna Group (2006), *available at* http://www.barna.org (last visited July 16, 2007). Thus, while almost half of all Americans attend church in a given week, half of those participants belong to small congregations, and many participate in small weekday religious

groups. Such small congregations and religious groups inevitably have fewer resources available to them. Flexible, affordable, or temporary access to public places may be the only option for such organizations to gather and practice their respective faiths.

To understand the importance of public spaces for religious groups, this Court need look no farther than nearby Montgomery County, Maryland. Pursuant to a recent information request, the county provided a list of all religious organizations using county public facilities in fiscal year 2007 to date (*see* Appendix). In this one county, in less than one year, over 230 different religious groups have utilized public space. These groups form a collage of the religious spectrum, from Amazing Grace AME Zion Church to the Islamic Weekend School to Jehovah's Witnesses Spanish Congregation to Kehila Chadasha to Mother Seton Parish to St. Luke Serbian Orthodox Church to Washingon DC Buddhists' Association to Temple Shalom.

That religious organizations frequently use public facilities is reflected in this Court's own case law. *E.g.*, *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001) (religious club to host Bible lessons and singing at public school); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (church to show religious-oriented film series at public school); *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226 (1990) (religious student group to use public school facilities for prayer and Bible discussion); *Widmar v. Vincent*, 454 U.S. 263 (1981) (religious student group to use state university facilities for worship and religious

discussion). It is also amply demonstrated by congressional findings and enactments.

For instance, the legislative history of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") reflects religious organizations' widespread need for access to facilities, such as in the following excerpt: "In a *significant number of communities*, land use regulation makes it difficult or impossible to build, buy or *rent space* for a new house of worship, whether large or small." CONG. REC. S7777 (daily ed. July 29, 2000) (Melissa Rogers, then-General Counsel, Baptist Jt. Comm. on Pub. Affairs (July 14, 2000)) (emphasis added). RLUIPA was enacted because "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. *The right to* build, buy, or *rent such a space is an indispensable adjunct of the core First Amendment right to assemble* for religious purposes." CONG. REC. S7774 (daily ed. July 27, 2000) (Jt. Stmt. of Sens. Hatch and Kennedy on RLUIPA, Ex. 1) (emphasis added). Congress found RLUIPA necessary in part because congregations have difficulty building their own facilities: "zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes. Or the codes permit churches only with individualized permission from the zoning board, and zoning boards use that authority in discriminatory ways." *Id.*

Case law from across the country reinforces both that the use of public space by religious

organizations has been widespread for many years[1]

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[1] *See generally* C.T. Foster, *Use of Public School Premises for Religious Purposes During Nonschool Time*, 79 A.L.R.2d 1148 (2007) (collecting cases); *see, e.g.*, *DeBoer v. Village of Oak Park*, 267 F.3d 558 (7th Cir. 2001) (use of town hall for National Day of Prayer event); *Culbertson v. Oakridge Sch. Dist. No. 76*, 258 F.3d 1061 (9th Cir. 2001) (religious group to hold Bible classes at public school); *Fairfax Covenant Church v. Fairfax County Sch. Bd.*, 17 F.3d 703 (4th Cir. 1994) (church group renting public school for worship and Bible study); *Good News/Good Sports Club v. Sch. Dist. of Ladue*, 28 F.3d 1501 (8th Cir. 1994); *Grace Bible Fellowship v. Maine Sch. Admin. Dist. No. 5*, 941 F.2d 45 (1st Cir. 1991) (church to rent space at public school for Christmas dinner with prayer and religious teaching); *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366 (3d Cir. 1990) (religious group to rent public school auditorium for performance by gospel preacher); *Concerned Women for Am. v. Lafayette County*, 883 F.2d 32 (5th Cir. 1989) (women's prayer group to use public library for prayer meeting); *Salinas v. Sch. Dist. of Kan. City*, 751 F.2d 288 (8th Cir. 1984) (religious group to hold educational film series at public school); *Liberty Christian Ctr., Inc. v. Bd. of Educ. of Watertown*, 8 F. Supp. 2d 176 (N.D.N.Y. 1998) (religious group to hold worship services in public school cafeteria); *Saratoga Bible Training Inst., Inc. v. Schuylerville Cent. Sch. Dist.*, 18 F. Supp. 2d 178 (N.D.N.Y. 1998) (religious group to hold Bible lecture in school auditorium); *Full Gospel Tabernacle v. Cmty. Sch. Dist. 27*, 979 F. Supp. 214 (S.D.N.Y. 1997) (church to hold Sunday worship at public school); *Quappe v. Endry*, 772 F. Supp. 1004 (S.D. Ohio 1991) (Bible study club to use space at public school); *Wallace v. Washoe County Sch. Dist.*, 818 F. Supp. 1346 (D. Nev. 1991) (church to hold Sunday worship services at public school); *Ford v. Manuel*, 629 F. Supp. 771 (N.D. Ohio 1985) (religious education council to rent space at public school); *Country Hills Christian Church v. Unified Sch. Dist. No. 512*, 560 F. Supp. 1207 (D. Kan. 1983) (religious group to hold worship services at public school); *Hunt v. Bd. of Educ. of Kanawha County*, 321 F. Supp. 1263 (S.D. W. Va. 1971) (religious student group to hold prayer meetings at public school); *O'Hara v. Sch. Bd. of Sarasota County*, 432 So.2d 1356 (Fla. Dist. Ct. App. 2d Dist. 1983) (church to hold religious services at public school); *Resnick v. E. Brunswick*

and that this Court should resolve this important issue. Most recently, in a decision that left a panel of the Second Circuit split three ways and without a majority holding on whether New York City's school system can prohibit worship services in its schools that it rents out to other groups for meetings, Senior Judge Walker commented that "there is no doubt that this particular dispute – no stranger to the Supreme Court and now focused on worship – would benefit from a more conclusive resolution by that Court." *Bronx Household of Faith v. Bd. of Educ. of N.Y.*, No. 06-0725-CV, 2007 WL 1880477, at *35 (2d Cir. July 2, 2007) (Walker, S.J., dissenting).

In short, both history and case law reflect the widespread use of public property for religious uses. That practice continues today, as reflected by the experience of the congregations in the *Amicus* Coalition for Equal Access. The issues presented by this case touch citizens across the country. The Ninth Circuit's decision threatens to impose a substantial burden on religious congregations, particularly on the small and the poor.

Twnshp. Bd. of Educ., 77 N.J. 88, 389 A.2d 944 (1978) (religious group to hold services at public school); *Keegan v. Univ. of Del.*, 349 A.2d 14 (Del. 1975) (religious group to hold services in state university dorms); *Pratt v. Ariz. Bd. of Regents*, 110 Ariz. 466, 520 P.2d 514 (1974) (religious group to hold services in state university stadium); *McKnight v. Bd. of Pub. Educ.*, 365 Pa. 422, 76 A.2d 207 (1950) (religious group to hold services at public school); *Greisinger v. Grand Rapids Bd. of Educ.*, 88 Ohio App. 364, 100 N.E.2d 294 (6th Dist. Wood County 1949) (religious group to hold religious themed lectures at public school).

II. Certiorari Should Be Granted Because the County's Policy Singling Out Religious Practice Violates the Free Exercise Clause

At the most elementary level, the county's policy violates the proscription of the First Amendment (made applicable to the States through the Fourteenth) that a government "make no law . . . prohibiting the free exercise" of religion. U.S. CONST. amend. 1. Religious services are the purest exercise of religion.[2] As this Court observed in *Smith*, the "exercise of religion" includes such actions as "assembling with others for a worship service, participating in sacramental use of bread and wine, [and] proselytizing" – the very actions the county has prohibited here. *Employment Div., Dep't Human Res. of Or. v. Smith*, 494 U.S. 872, 877-88 (1990).

The County's policy is not one that feigns neutrality on its face, hiding its real purpose to restrict religious exercise. The County's policy openly and notoriously singles out "religious services" for exclusion from the public meeting room that is otherwise available for education, community, and cultural functions. It is hard to imagine a starker example of a law prohibiting the free exercise of religion, because that is exactly and expressly what it does.

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[2] While not addressed in the opinions below, Petitioners raised the violation of the Free Exercise Clause in the second count of their Complaint. (App. to Pet. Cert. 67a n.1; Am. Ver. Compl. ¶¶ 86-114.)

In *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993), this Court considered a local ordinance that, on its face, only prohibited cruelty to animals, but was designed to prohibit a small sect's religious practice. This Court looked behind the face of the ordinance to find it an unconstitutional infringement of the free exercise of religion. *Id.* at 534, 545-46. If the ordinance in *Lukumi* needed redress by this Court, how much more so does this county policy. It is express, and it targets the full panoply of religious services, not just those of a minority sect. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue . . . prohibits conduct because it is undertaken for religious reasons." *Id.* at 532. Like in *Lukumi*, the Court must intervene to protect small congregations whose free exercise rights would otherwise be abridged. *See also Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144 (3rd Cir. 2002) (unconstitutional to enforce ordinance banning posting on power poles only against lechis posted by Orthodox Jews); *Fraternal Order of Police Newark Lodge No. 12 v. Newark*, 170 F.3d 359 (3rd Cir. 1999) (unconstitutional to except from regulation banning police from having beards for medical but not for religious reasons); *Peter v. Wedl*, 155 F.3d 922 (7th Cir. 1998) (law prohibiting government-funded special education services at only religious schools was unconstitutional); *Hartman v. Stone*, 68 F.3d 973 (6th Cir. 1995) (restrictions on government funding for religious child care providers but not other providers was unconstitutional).

The open discrimination toward religious worship reflected in the county's policy is expressly

forbidden by the Free Exercise Clause. By adding its imprimatur, the Ninth Circuit sets a dangerous precedent that threatens to impede religion practice throughout this country, especially among small and poor congregations.

III. Certiorari Should Be Granted Because the County's Policy Violates the Free Speech Clause

This case, as Senior District Judge Karlton writing in concurrence below dramatized, presents a vivid contrast of visions of the First Amendment. Judge Karlton, bemoaning the "sorry state of the law" as set out by this Court (while professing to be a good soldier in applying this Court's decisions "no matter how misguided"), suggests that the Justices should "leave their chambers, go out in the street and ask the first person they meet" to help them distinguish "a sermon from a speech" and a worship service from other types of meetings. *Faith Ctr. Church*, 462 F.3d at 1215-16 (Karlton, S. J., concurring).

This just does not wash. Religious services, from the sermon to singing to prayer, are chock full of speech. This is not surprising, as religious services are communal and involve communication. The only thing that materially distinguishes religious services from other types of meetings is that the speech is predominantly religious in nature. But it is still speech.

In fact, the Scriptures of the three major religions in this country, Christianity, Judaism, and

Islam, all enjoin their adherents to *speak* to each other and to a Divine Being in worship services:

> *They devoted themselves to the apostles' teaching and to the fellowship, to the breaking of bread and to prayer.* Acts 2:42 (New Int'l Version).

* * *

> *Raise a shout for the Lord, all the earth; worship the Lord in gladness; come into His presence with shouts of joy. . . . Enter His gates with praise, His courts with acclamation. Praise Him! Bless His name! . . . Sing to the Lord a new song, His praises in the congregation of the faithful.* Ps. 100:1-2, 4; 149:1b (Jewish Publication Soc'y 1999).

* * *

> *Those who are near to the Lord, disdain not to do Him worship: They celebrate His praises, and bow down before Him. . . . But celebrate the praises of thy Lord, and be of those who prostrate themselves in adoration.* Qur'an, Sura 7:206, 15:98 (http://www.islamicity.com/mosque/TOPICQ/P.htm).

Sermons, prayers, chants, and singing all involve speech. Putting such speech in the context of a "religious service" does not make it any less "speech." Indeed, Faith Center's service was described as "Prayer, Praise and Worship," including a "Purpose to Teach." 462 F.3d at 1199.

The fact that there are some symbolic actions practiced in services of all the major religions does not alter the analysis. For instance, in Christianity, baptism and the Eucharist could perhaps be defined as the quintessential experiences of the worship service. But even these practices cannot be divorced from speech. An individual is not baptized by taking a walk in the rain, and one does not celebrate the Lord's Supper by snacking on wine and saltines. Similarly, bowing towards Mecca is directly associated with prayer, and Seder rituals are entwined with spoken messages passed down through the centuries. The words spoken are central to the physical practices performed in these various religions.

But even if sacramental or other acts in a religious service are viewed in isolation, they are protected "speech" expressions. It would be odd, indeed, if participating in religious sacraments were not given at least as much protection under the Free Speech Clause as is nude dancing or burning the flag. *See Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991) (nude dancing is expressive conduct afforded some First Amendment protection); *United States v. Eichman*, 496 U.S. 310 (1990) (flag burning is protected "speech"); *see also Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (wearing black arm bands); *Brown v. La.*, 383 U.S. 131 (1966) (silent sit-in at public library room).

IV. Certiorari Should Be Granted Because the County's Policy, Even If Otherwise Valid, Generates an Improper Entanglement

Of course, the Ninth Circuit majority's parsing of "religious speech" and "religious services" rests on a voracious reading of the Establishment Clause – that it trumps the Free Exercise Clause in all particulars and requires public institutions not just to treat religious speech neutrally, but to identify and extirpate it from public facilities. This has never been the law, and it is a serious misreading of the Religion Clauses, which should be read in harmony, not in opposition. *See generally* Carl H. Esbeck, *"Play in the Joints Between the Religion Clauses" and Other Supreme Court Catachreses*, 34 HOFSTRA L. REV. 1331 (2006); Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 WM. & MARY L. REV. 2105, 2207 (2003); Douglas Laycock, *Continuity and Change in the Threat to Religious Liberty: The Reformation Era and the Late Twentieth Century*, 80 MINN. L. REV. 1047, 1088 (1996).

Religious speech, it is suggested, may be treated differently because it is "controversial." *Faith Ctr. Church*, 462 F.3d at 1206-07, *citing DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 966 (9th Cir. 1999). In actuality, very few religious services are controversial. But even if they were, it would be impossible to distinguish them from a Democratic Party meeting in which potential Presidential candidates were heatedly

discussed.[3] The county allowing the Democratic Party to use its library meeting room no more "establishes" the Democratic Party as the county's party of choice than allowing Faith Church to use it "establishes" that church as the county's favorite. The likelihood for contentious debate does not distinguish religious speech and activities from other types of speech. "The State's goal of preventing sectarian bickering and strife may not be accomplished by regulating religious speech and political affiliation. The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring); *see generally* Richard Garnett, *Religion, Division and the First Amendment*, 94 GEO. L.J. 1667 (2006).

Far from protecting against an Establishment Clause violation, the undertaking Judge Kramer suggests (and the majority opinion attempts) itself violates both the Free Speech and the Establishment Clauses. The majority in applying the county's policy must look over the shoulders of the county

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[3] A similar amorphous concern about contentiousness was raised and rejected by this Court in *Lamb's Chapel*: "The District also submits that it justifiably denied use of its property to a 'radical' church for the purpose of proselytizing, since to do so would lead to threats of public unrest and even violence. . . . There is nothing in the record to support such a justification, which in any event would be difficult to defend as a reason to deny the presentation of a religious point of view about a subject the District otherwise opens to discussion on District property." 508 U.S. at 395-96.

employees and attempt to distinguish "religious services" from "educational, cultural and community related meetings, programs, and activities." *Faith Ctr. Church*, 462 F.3d at 1199, 1198, 1212-1214. The Free Speech Clause does not allow distinctions due to content, but that is exactly the exercise which the policy requires. *Eichman*, 496 U.S. at 315-17 (Congress cannot criminalize flag burning on the grounds that content of expression is offensive); *Widmar*, 454 U.S. at 273 (public university could not discriminate against religious group based on the content of their speech); *Healy v. James*, 408 U.S. 169, 187 (1972) (public university president could not deny political group official recognition because he disagreed with the content of their speech).

Nor is it a permissible judicial exercise to attempt to parse what is "religious services" content and what is not. This Court has already found that distinguishing "worship" from other speech is an "impossible" task. *Widmar*, 454 U.S. at 272 n.11; *see also id.* at 271 n.9 (distinction is "judicially unmanageable"). "Merely to draw the distinction [between religious worship and religious speech] . . . would tend inevitably to entangle the State with religion in a manner forbidden by our cases." *Id.* at 269 n.6.

CONCLUSION

The Ninth Circuit's decision has the potential for great mischief throughout both that Circuit and this country. It allows the government to prohibit the free exercise of religion and to discriminate against religious speech as if it were disfavored, rather than expressly protected, under our Constitution. At a minimum, it requires courts to entangle themselves in distinguishing between "religious services" and other "religious speech."

The *amici* request that this Court grant the petition and, following review, reverse the United States Court of Appeals for the Ninth Circuit and reinstate the injunction of the district court.

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